IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST CIVIL APPEAL NO. 285 OF 1989

Mangaldas N. Verma Charitable Trust by it Managing Trustee, Mrs. Sarla Verma, registered under the provisions of Bombay Public Trust Act, 1950, and having its office at Dr. E. Berges Road, 35, Hospital Avenue, Opp. Shirodkar, High School, Bombay-400 012. .. **Appellant**

.. **Versus** ..

1. The Municipal Corporation of Greater Bombay established under the Bombay Municipal Corporation Act, 1888 and having its office at Municipal Building, Mahapalika Marg, Bombay-400 001.

2. The Municipal Commissioner for Greater Bombay having his office at Municipal Building, Mahapalika Marg, Bombay-400 001. .. **Respondents**

Mr. Rahul Chitnis, Advocate for the appellant,

Mr. N.V. Walawalkar, Advocate for the respondents.

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Coram : K.J. Rohee, J.

Reserved on : 24th March, 2006.

Pronounced on : 31st March, 2006.

Oral Judgment :

1. The appellant has preferred this appeal against the dismissal of Municipal Appeal No.186 of 1986 under section 2 (1)(ix) of the Mumbai Municipal Corporation Act, 1888 by the Additional Chief Judge, Bombay by order dated 30th July, 1988.

2. The facts which are not disputed for the purposes of the present appeal are that the appellant is a public charitable trust registered under the Bombay Public Trust Act, 1950 having its office at Mumbai. Respondent no.1 is the Corporation established under the Bombay Municipal Corporation Act, 1888 and respondent no.2 is the Chief Executive Officer of respondent no.1.

3. The appellant is the owner of a godown situated at

Mumbai. It has been let out to M/s. I.T.C. And M/s. Chika Limited on lease for store purposes. The said godown was let out for the first time in 1978 under the agreement dated 7.4.1978 at the rent of Re. 1.30 ps. Per sq. ft. per month inclusive of municipal taxes. By agreement dated 3.1.1984 the rent was enhanced to Re. 1.55 ps. Per sq. ft. per month. The said godown was assessed by respondent no.1.

4. The appellant objected the assessment. After giving notice as required under the provisions of the Bombay Municipal Corporation Act, 1888 and after hearing the appellant, the investigating officer by his order dated 31.3.1986 fixed Rateable Value at Rs. 1,56,465/- with effect from 1.4.1986.

5. The appellant preferred appeal against the order of the investigating officer challenging the fixation of Rateable Value. According to the appellant the order of the investigating officer is arbitrary, illegal and contrary to the provisions of Section 154 of the Bombay Municipal

Corporation Act, 1888. The Rateable Value fixed by the investigating officer is highly excessive, exorbitant and is not reasonable letting value of the said property. According to the appellant the said property was previously assessed to Rs.93,890/- per annum with effect from 1.7.1978. There was no change in the property nor there was any other reason to warrant increase in the Rateable Value of the said property. The investigating officer failed to take into consideration the location of the property and the amenities available. The investigating officer also failed to consider that the appellant is a public charitable trust and the appellant is utilising the money for public charity purpose. The investigating officer should have considered the standard rent namely the rent at which the Godown was first let though the rent was increased. The appellant, therefore, prayed for setting aside the order of the investigating officer dated 31.3.1986 and for fixation of proper and reasonable Rateable Value of the said property.

6. The respondents opposed the appeal by their

written statement. According to the respondents the premises are being used for commercial purposes and as such the Rateable Value is bound to be high. The respondents submitted that the property is to be assessed on the basis of the agreed rent of the property during the relevant year of assessment or what the property would normally fetch in given circumstances i.e. what the hypothetic tenant would pay to the hypothetical landlord during the relevant year of the assessment. Hence the respondents submitted that the contention of the appellant that the Rateable Value fixed by the respondents is high as compared to previous assessment year cannot hold good. It was further contended that the appellant did not challenge the Rateable Value of the earlier year and thus acquiesced the same. According to the respondents the appeal is liable to be dismissed.

7. The appellant's examined Saraldas Sitaram Sohal, who was working with the appellant as Manager since 1978. He was cross examined on behalf of the respondents. The appellant also filed several documents.

8. After considering the oral and documentary evidence on record, the learned Additional Chief Judge, Bombay held that the impugned order dated 31.3.1986 fixing the Rateable Value of the suit property at Rs.1,56,465/- with effect from 1.4.1986 per annum is reasonable and correct. The appellant has challenged the said order.

9. I have heard Mr. Rahul Chitnis, Advocate for the appellant and Mr. N.V. Walawalkar, Advocate for the respondents.

10. Mr. Chitnis, the learned counsel for the appellant, submitted that Section 154 of the Bombay Municipal Corporation Act, 1888 mandates as to how Rateable Value is to be determined. Sub-Section (1) of Section 154 of the Mumbai Municipal Corporation Act, 1888 provides that in

order to fix the Rateable Value of any building or land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever. Mr. Chitnis submitted that “rateable value” is not defined in the Mumbai Municipal Corporation Act, 1888. So, for this purpose, we have to refer to the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the Bombay Rents Act).

11. Sub-Section (10) of Section 5 of the said Act defines "standard rent". Since, in the present case, standard rent is not fixed by the Court/Controller, sub section (iii) of sub section (b) of sub section 10 of Section 5 is relevant. It shows that when the standard rent is not fixed by the Court/Controller, where they were first let after the first day of September 1940, the rent at which they

were first let. According to Mr. Chitnis, standard rent is to be taken as the reasonable rent of the property and in no circumstance reasonable rent can exceed the standard rent.

12. Mr. Walawalkar, the learned counsel for the respondents, on the other hand, submitted that the authorities of the Corporation were justified in fixing the Rateable Value of the suit property by taking into consideration the agreed rent of Re. 1.55 ps. Per sq. ft. per month as per the agreement dated 3.1.1984. Mr. Walawalkar, pointed out that by increasing rent the appellant is taking advantage of the increased rent. However, the appellant wants that the Corporation should not consider the increase in the rent and should continue to take into consideration the rent as per the first agreement dated 7.4.1978. Mr. Walawalkar submitted that the burden is cast on the assessee to show that the Rateable Value fixed by the corporation authorities or the increase proposed by the corporation authorities is not justified. Mr.

Walawalkar submitted that the appellant has obviously failed to discharge that burden and hence the learned Trial Judge was justified in dismissing the appeal preferred by the appellant.

13. The submissions made by Mr. Walawalkar appear to be very attractive, but unfortunately for him the entire case law is against his submissions. The submission by Mr. Walawalkar that the appellant has not discharged the burden of proof cast on it is also not acceptable because PW 1 has proved the first agreement dated 7.4.1978 as well as the subsequent agreement dated 3.1.1984. By establishing the first agreement it has become easy to find out standard rent of the suit property and consequently the assessment of rateable value of the suit property.

14. Mr. Rahul Chitnis, the learned counsel for the appellant, relied on the following case law in support of his submissions.

(i) In the **Corporation of Calcutta .vrs. Sm. Padma Debi and others, AIR 1962 SC 151**, it has been observed as under :

> *The word "reasonably" in the section throws further light on this interpretation. The word "reasonably" is not capable of precise definition. "Reasonable" signifies "in accordance with reasons". In the ultimate analysis it is a question of fact : Whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness. Equally it would be in congruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable. Under the Rent*

Control Act, the receipt of any rent higher than the standard rent fixed under the Act is made penal for the landlord. Section 8 of the said Act says that any amount in excess of the standard rent of any premises shall be irrecoverable notwithstanding any agreement to the contrary. Section 33(a) thereof provides inter alia that "whoever knowingly receives, whether directly or indirectly, any sum on account of the rent of any premises in excess of the standard rent" will be liable to certain penalties. "Standard rent" has been defined in Section 2 (10) (b) to mean that "where the rent has been fixed under Section 9, the rent so fixed; or at which it would have been fixed if application were made under the said section." A combined reading of the said provisions leaves no room for doubt that a contract for a rent at a rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above the rate of the

standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let.

It is said that Section 127(a) does not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. So stated the proposition is unexceptionable. Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a "black market" a term euphemistically used to

commercial transactions entered into between parties in defiance of law. In that situation, a statutory limitation of rent circumscribes the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit.

(ii) In **Filmistan Private Limited .vrs. Municipal Commissioner for Greater Bombay, 1971 BLR Vol. No.LXXIV Page 589**, it has been observed as under :

It was held that in view of Section 5 (10)(b)(iii) read with Section 11 of the Bombay Rent Act, the agreed rent of the premises would be the standard rent till such time as an application is made under Section 11 of the Act.

(iii) In **Municipal Corporation of Greater Mumbai and another .vrs. Kamla Mills Ltd., (2003) 6 SCC 315,** it was observed as under :

Under Section 139 of the Bombay

Municipal Corporation Act, the Corporation is inter alia empowered and obligated to impose property taxes. The property taxes comprise general tax, water tax, sewage tax and so on. All these taxes are leviable at such percentage of the rateable value as determined by the Municipal Corporation. The manner of determination of rateable value, therefore, becomes crucial to the debate before us. The material portion of Section 154 of the Bombay Municipal Corporation Act relevant for our discussion reads as under :

" 154. (1) In order to fix the rateable value of any building or land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu

of all allowances for repairs or on any other account whatever."

The key words of Section 154 (1) are " the amount of the annual rent for which such land or building might reasonably be expected to let from year to year" (emphasis added). Considering forensic skill and judicial talent have been expended to ascertain the meaning of these words. Depending upon whether the area in question is subject to rent restriction legislation or not, the courts have answered the question differently.

The case before us governed by the provisions of a rent restriction legislation viz. The Bombay Rent Act.

The contention of the learned counsel for the respondent that the rateable value to be fixed under section 154(1) of the Bombay Municipal Corporation Act is limited by the measure of the standard rent within the meaning of Section 5(10) of the

Bombay Rent Act appears to be justified.

No doubt, the Bombay Municipal Corporation Act is a legislation for fixing of the rateable value and imposing of property tax, but it nowhere defines what "rateable value" is, except in general terms under section 154(1). It must be remembered that the principle of "standard rent" has not been invoked by reason of any requirement or declaration under the Municipal Corporation Act, but by reason of the fact that if the rateable value is the reasonable annual rent at which the property may be expected to be let, then we must consider what a hypothetical tenant would be willing to offer as rent for the property let. As has been pointed out earlier, the concept of reasonableness would necessarily include the concept of an owner and a tenant who are both law-abiding and do not indulge in "black

> *marketing". If there is a rent restriction legislation which imposes a limit on the rent which can be charged, then the concept of "reasonableness" would include that restriction also. This is the reason why in a series of judgments of this Court it has been laid down that the rateable value is limited by the standard rent determined or determinable under the provisions of the rent restriction legislation.*

15. From the case law cited above, it is clear that while fixing the rateable value of the suit property, the rent of Re. 1.30 ps. Per sq. ft. per month as per the agreement dated 7.4.1978 and which is the standard rent alone is to be taken into consideration. The rent exceeding standard rent though agreed between the lessor and lessee cannot be taken into consideration while fixing rateable value of the suit property. The investigating officer has not considered the standard rent and even the learned trial Judge was under misconception that as per the agreement dated

3.1.1984 the rent of Re. 1.55 ps. Per sq. ft. per month was decided for the first time and that it was the first letting of the suit property. The decision of the investigating officer as well as the learned trial Judge cannot, therefore, be sustained and will have to be set aside.

16. It was contended on behalf of the Corporation that the appellant did not challenge the assessment of the previous year by preferring appeal against it and thus the appellant acquiesced to the said assessment. As such the appellant is not entitled to challenge the assessment of the subsequent year. Hence the appeal is not tenable and is liable to be dismissed on this ground alone.

17. I am unable to appreciate the submission. It is true that the appellant did not prefer appeal against the assessment of the previous year. However, this does not debar the appellant from challenging the assessment of the subsequent year because the cause of action is separate. The appellant has, therefore, every right to challenge the assessment which it has challenged in the present case

and it cannot be said that the appeal is not tenable on this count.

18. In this view of the matter, I pass the following order :

(i) The appeal is allowed.

(ii) The Judgment of the learned Trial Judge is set aside. The appeal preferred by the appellant before the trial Court stands allowed. The decision of the Investigating Officer dated 31.3.1986 is set aside. The Investigating Officer is directed to fix the rateable value of the suit property by taking into consideration the rent of Re. 1.30 ps. per sq. ft. per month.

(iii) There shall be no order as to costs.

(K. J. Rohee, J.)